IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 10444 OF 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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THE MANAGER, KAILASH STEEL WORKS - Petitioner(s)
Versus
RASIDBHAI MOHSINALI SAIYAD & ANR. - Respondent(s)

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Appearance :
Shri N. D. Songara for Shri Prabhakar Upadyay for Petitioner(s).
Shri M. A. Quraishi for Respondent(s) : 1.
Ms. Manisha Lavkumar, AGP for Respondent(s) : 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/07/2007

ORAL JUDGMENT

The petitioner-Establishment, being aggrieved by the order dated 31st December, 1999 passed by the learned Presiding Officer,

Labour Court, Ahmedabad in Reference (LCA) No.87 of 1997, directing payment of Rs.42,600/- to the respondent-workman, is before this Court.

2. The short facts necessary for disposal of the present Writ Application are that challenging the illegal termination/retrenchment, the workman came to the learned Labour Court and filed the statement of his claims. The present petitioner-Establishment also filed the written statement. The workman filed his affidavit in support of his case, but, the present petitioner-Establishment did not file any affidavit in support of their case. Both the parties with a clear understanding and open mind informed the Court that they were not to lead any oral evidence. However, the workman submitted to the Court that he was forgoing his right of reinstatement, but, was confining his case to the monetary benefits.

The learned Labour Court relied upon the affidavit of the workman and made the award in the sum of Rs.42,600/-.

3. Shri N.D. Songara, learned Counsel for the petitioner-Establishment, submits that the Counsel for the Establishment had made a *bona fide* statement in the Court that the Establishment was not ready to lead any evidence. However, he was unable to say as to why the affidavit in support of the case of the Establishment was not filed.

4. Ms. Manisha Lavkumar, learned Assistant Government Pleader, submits that the State has been unnecessarily joined as party respondent in the matter.

5. In the opinion of this Court, the action of the Counsel of the Establishment was a positive action. Once he thought that it was not necessary to lead any evidence in view of the submission of the workman that he was interested in reinstatement, then, it cannot be argued in the High Court that the Counsel was acting *bona fide*. *Bona fide* acts are those, which are done in view of the understanding of a particular person or after understanding the facts or the circumstances. In a Court when a party says that it is not ready to lead any evidence, then, it is not a *bona fide* act, but, it is a statutory act because the party is giving up its right to lead evidence.

6. The learned Labour Court below certainly was justified in relying upon the statements made by the workman on oath, which remained uncontroverted.

7. I find no reason to interfere. The petition deserves to and is, accordingly, dismissed. Rule is discharged. No costs.

[R.S.Garg, J.]

*kamlesh**